

TWENTY-THIRD DAY - FEBRUARY 8, 2006**LEGISLATIVE JOURNAL****NINETY-NINTH LEGISLATURE
SECOND SESSION****TWENTY-THIRD DAY**

Legislative Chamber, Lincoln, Nebraska
Wednesday, February 8, 2006

PRAYER

The prayer was offered by Pastor David deFreese, Evangelical Lutheran Church of America, Nebraska Synod, Omaha.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Cudaback presiding.

The roll was called and all members were present except Senator Cunningham who was excused; and Senators Bourne, Brashear, Brown, Combs, Cornett, Heidemann, and Schimek who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the twenty-second day was approved.

ANNOUNCEMENT

The Legislative Performance Audit Committee designates LB 956 as its priority bill.

MOTION - Approve Appointment

Senator Schrock moved the adoption of the Natural Resources Committee report for the confirmation of the following appointment(s) found on page 557:

Environmental Quality Council
Michael Griffin

Voting in the affirmative, 29:

Aguilar	Fischer	Johnson	Pahls	Schrock
Baker	Foley	Kopplin	Pedersen, Dw.	Smith
Connealy	Friend	Kruse	Pederson, D.	Stuthman
Cudaback	Howard	Landis	Price	Thompson
Engel	Hudkins	Langemeier	Raikes	Wehrbein
Erdman	Jensen	McDonald	Redfield	

Voting in the negative, 0.

Present and not voting, 12:

Beutler	Chambers	Kremer	Preister
Burling	Flood	Louden	Stuhr
Byars	Janssen	Mines	Synowiecki

Excused and not voting, 8:

Bourne	Brown	Cornett	Heidemann
Brashear	Combs	Cunningham	Schimek

The appointment was confirmed with 29 ayes, 0 nays, 12 present and not voting, and 8 excused and not voting.

GENERAL FILE

LEGISLATIVE BILL 776. Title read. Considered.

The Standing Committee amendment, AM1951, found on page 456, was adopted with 30 ayes, 0 nays, 16 present and not voting, and 3 excused and not voting.

Advanced to E & R for review with 30 ayes, 0 nays, 16 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 818. Title read. Considered.

The Standing Committee amendment, AM1936, found on page 423, was adopted with 28 ayes, 0 nays, 19 present and not voting, and 2 excused and not voting.

Senator Burling offered the following amendment:
AM2174

- 1 1. On page 3, line 22, after the period insert "A race
- 2 sponsor using tires pursuant to subdivision (3)(c)(ii) of this
- 3 section shall file a tire disposal plan with the department prior
- 4 to the sponsor's first use of tires as safety barriers. The plan
- 5 shall continue in effect as long as such sponsor uses tires as
- 6 safety barriers.".

Senator Burling moved for a call of the house. The motion prevailed with 19 ayes, 0 nays, and 30 not voting.

The Burling amendment was adopted with 46 ayes, 0 nays, 1 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

Advanced to E & R for review with 45 ayes, 0 nays, 2 present and not voting, and 2 excused and not voting.

SELECT COMMITTEE REPORTS **Enrollment and Review**

LEGISLATIVE BILL 778. Placed on Select File as amended.

(E & R amendment, AM7155, is printed separately and available in the Bill Room, Room 1104.)

LEGISLATIVE BILL 887. Placed on Select File as amended.

E & R amendment to LB 887:

AM7154

- 1 1. On page 15, line 23, strike "certified a vendor" and
- 2 insert "certifies a vendor-provided".

(Signed) Michael Flood, Chairperson

BILLS ON FIRST READING

The following bills were read for the first time by title:

LEGISLATIVE BILL 44A. Introduced by Redfield, 12.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 44, Ninety-ninth Legislature, Second Session, 2006.

LEGISLATIVE BILL 996A. Introduced by Loudon, 49.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 996, Ninety-ninth Legislature, Second Session, 2006.

STANDING COMMITTEE REPORTS
Education

LEGISLATIVE BILL 141. Indefinitely postponed.
LEGISLATIVE BILL 327. Indefinitely postponed.
LEGISLATIVE BILL 347. Indefinitely postponed.
LEGISLATIVE BILL 350. Indefinitely postponed.
LEGISLATIVE BILL 357. Indefinitely postponed.
LEGISLATIVE BILL 378. Indefinitely postponed.
LEGISLATIVE BILL 502. Indefinitely postponed.
LEGISLATIVE BILL 556. Indefinitely postponed.
LEGISLATIVE BILL 574. Indefinitely postponed.
LEGISLATIVE BILL 596. Indefinitely postponed.
LEGISLATIVE BILL 624. Indefinitely postponed.
LEGISLATIVE BILL 637. Indefinitely postponed.
LEGISLATIVE BILL 704. Indefinitely postponed.
LEGISLATIVE BILL 718. Indefinitely postponed.
LEGISLATIVE BILL 961. Indefinitely postponed.
LEGISLATIVE BILL 1118. Indefinitely postponed.
LEGISLATIVE BILL 1138. Indefinitely postponed.

LEGISLATIVE RESOLUTION 28CA. Indefinitely postponed.

(Signed) Ron Raikes, Chairperson

Agriculture

LEGISLATIVE BILL 1081. Placed on General File.

LEGISLATIVE BILL 856. Placed on General File as amended.
(Standing Committee amendment, AM2107, is printed separately and available in the Bill Room, Room 1104.)

LEGISLATIVE BILL 934. Placed on General File as amended.
Standing Committee amendment to LB 934:
AM2086

- 1 1. Strike original section 8.
- 2 2. On page 8, line 23, strike "to 8" and insert "and 7".
- 3 3. Renumber the remaining sections accordingly.

LEGISLATIVE BILL 286. Indefinitely postponed.
LEGISLATIVE BILL 706. Indefinitely postponed.

(Signed) Bob Kremer, Chairperson

ANNOUNCEMENTS

Senator Flood designates LB 1199 as his priority bill.

Senator Fischer designates LB 924 as her priority bill.

AMENDMENTS - Print in Journal

Senator Combs filed the following amendment to LB 454A:
AM2169

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 Section 1. There is hereby appropriated (1) \$774,000 from
- 4 the Public Safety Cash Fund for FY2006-07 and (2) \$218,000 from
- 5 the Public Safety Cash Fund for FY2007-08 to the Nebraska State
- 6 Patrol, for Program 100, to aid in carrying out the provisions
- 7 of Legislative Bill 454, Ninety-ninth Legislature, Second Session,
- 8 2006.
- 9 Total expenditures for permanent and temporary salaries
- 10 and per diems from funds appropriated in this section shall not
- 11 exceed \$240,320 for FY2006-07 or \$80,800 for FY2007-08.
- 12 There is included in this appropriation for FY2006-07
- 13 \$30,000 Cash Funds to contract with the Department of Motor
- 14 Vehicles to pay for the cost of temporary staff and computer
- 15 programming at the Department of Motor Vehicles in order to
- 16 carry out the provisions of Legislative Bill 454, Ninety-ninth
- 17 Legislature, Second Session, 2006.
- 18 Sec. 2. There is hereby appropriated \$30,000 from
- 19 the Department of Motor Vehicles Cash Fund for FY2006-07 to
- 20 the Department of Motor Vehicles, for Program 70, to aid in
- 21 carrying out the provisions of Legislative Bill 454, Ninety-ninth
- 22 Legislature, Second Session, 2006.
- 23 No expenditures for permanent and temporary salaries and
- 1 per diems for state employees shall be made from funds appropriated
- 2 in this section.

Senator Combs filed the following amendment to LB 454:
AM2143

(Amendments to Standing Committee amendments, AM0810)

- 1 1. On page 2, line 6, strike "and"; after line 6 insert
- 2 the following new subdivision:
- 3 "(6) Place of worship means a church, a synagogue, a
- 4 mosque, an ecclesiastical or a denominational organization, or a
- 5 building or premises established for worship, at which religious
- 6 services or activities are regularly conducted, and any cemetery
- 7 associated therewith; and"; and in line 7 strike "(6)" and insert
- 8 "(7)".

Senator Combs filed the following amendment to LB 454:
AM2142

(Amendments to Standing Committee amendments, AM0810)

- 1 1. On page 11, after line 14, insert the following new
- 2 subdivision:

3 "(c) The Concealed Handgun Permit Act shall not supersede
 4 policies or rules and regulations adopted and promulgated under
 5 the Foster Care Review Act with respect to prohibiting handguns
 6 in foster care facilities, child-caring agencies, and child-placing
 7 agencies.".

STANDING COMMITTEE REPORTS

Agriculture

The Agriculture Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

John Peetz - State Fair Board

VOTE: Aye: Senators Burling, Erdman, Fischer, Preister, Kremer, Wehrbein. Nay: None. Absent: Senators Chambers, Cunningham.

The Agriculture Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Linda Lovgren - State Fair Board

VOTE: Aye: Senators Burling, Erdman, Fischer, Preister, Kremer, Wehrbein. Nay: None. Absent: Senators Chambers, Cunningham.

(Signed) Bob Kremer, Chairperson

SELECT FILE

LEGISLATIVE BILL 876. E & R amendment, AM7150, printed separately and referred to on page 544, was adopted.

Senator Redfield withdrew the Redfield-Mines pending amendment, AM2102, found on page 535.

Senator Redfield offered the following amendment:
 AM2160

(Amendments to E & R amendments, AM7150)

- 1 1. Insert the following new sections:
- 2 Section 1. Sections 1 to 7 of this act shall be known
- 3 and may be cited as the Financial Data Protection and Consumer
- 4 Notification of Data Security Breach Act of 2006.
- 5 Sec. 2. For purposes of the Financial Data Protection and
- 6 Consumer Notification of Data Security Breach Act of 2006:
- 7 (1) Breach of the security of the system means the
- 8 unauthorized acquisition of unencrypted computerized data that
- 9 compromises the security, confidentiality, or integrity of personal

10 information maintained by an individual or a commercial entity.
 11 Good faith acquisition of personal information by an employee or
 12 agent of an individual or a commercial entity for the purposes of
 13 the individual or the commercial entity is not a breach of the
 14 security of the system if the personal information is not used or
 15 subject to further unauthorized disclosure. Acquisition of personal
 16 information pursuant to a search warrant, subpoena, or other court
 17 order or pursuant to a subpoena or order of a state agency is not a
 18 breach of the security of the system;

19 (2) Commercial entity includes a corporation, business
 20 trust, estate, trust, partnership, limited partnership, limited
 21 liability partnership, limited liability company, association,
 22 organization, joint venture, government, governmental subdivision,
 1 agency, or instrumentality, or any other legal entity, whether for
 2 profit or not for profit;

3 (3) Encrypted means converted by use of an algorithmic
 4 process to transform data into a form in which the data is rendered
 5 unreadable or unusable without use of a confidential process or
 6 key;

7 (4) Notice means:

8 (a) Written notice;

9 (b) Telephonic notice;

10 (c) Electronic notice, if the notice provided is

11 consistent with the provisions regarding electronic records and
 12 signatures set forth in 15 U. S. C. 7001, as such section existed
 13 on January 1, 2006;

14 (d) Substitute notice, if the individual or commercial
 15 entity required to provide notice demonstrates that the cost of
 16 providing notice will exceed seventy-five thousand dollars, that
 17 the affected class of Nebraska residents to be notified exceeds one
 18 hundred thousand residents, or that the individual or commercial
 19 entity does not have sufficient contact information to provide
 20 notice. Substitute notice under this subdivision requires all of
 21 the following:

22 (i) Electronic mail notice if the individual or
 23 commercial entity has electronic mail addresses for the members of
 24 the affected class of Nebraska residents;

25 (ii) Conspicuous posting of the notice on the web site of
 26 the individual or commercial entity if the individual or commercial
 27 entity maintains a web site; and

1 (iii) Notice to major statewide media outlets; or

2 (e) Substitute notice, if the individual or commercial
 3 entity required to provide notice has ten employees or fewer and
 4 demonstrates that the cost of providing notice will exceed ten
 5 thousand dollars. Substitute notice under this subdivision requires
 6 all of the following:

7 (i) Electronic mail notice if the individual or
 8 commercial entity has electronic mail addresses for the members of
 9 the affected class of Nebraska residents;

10 (ii) Notification by a paid advertisement in a local
11 newspaper that is distributed in the geographic area in which the
12 individual or commercial entity is located, which advertisement
13 shall be of sufficient size that it covers at least one-quarter of
14 a page in the newspaper and shall be published in the newspaper at
15 least once a week for three consecutive weeks;

16 (iii) Conspicuous posting of the notice on the web
17 site of the individual or commercial entity if the individual or
18 commercial entity maintains a web site; and

19 (iv) Notification to major media outlets in the
20 geographic area in which the individual or commercial entity is
21 located;

22 (5) Personal information means a Nebraska resident's
23 first name or first initial and last name in combination with any
24 one or more of the following data elements that relate to the
25 resident if either the name or the data elements are not encrypted ,
26 redacted, or otherwise altered by any method or technology in such
27 a manner that the name or data elements are unreadable:

1 (a) Social security number;

2 (b) Motor vehicle operator's license number or state
3 identification card number;

4 (c) Account number or credit or debit card number,
5 in combination with any required security code, access code,
6 or password that would permit access to a resident's financial
7 account;

8 (d) Unique electronic identification number or routing
9 code, in combination with any required security code, access code,
10 or password; or

11 (e) Unique biometric data, such as a fingerprint,
12 voice print, or retina or iris image, or other unique physical
13 representation.

14 Personal information does not include publicly available
15 information that is lawfully made available to the general public
16 from federal, state, or local government records; and

17 (6) Redact means to alter or truncate data such that
18 no more than the last four digits of a social security number,
19 motor vehicle operator's license number, state identification card
20 number, or account number is accessible as part of the personal
21 information.

22 Sec. 3. (1) An individual or a commercial entity
23 that conducts business in Nebraska and that owns or licenses
24 computerized data that includes personal information about a
25 resident of Nebraska shall, when it becomes aware of a breach
26 of the security of the system, conduct in good faith a reasonable
27 and prompt investigation to determine the likelihood that personal
1 information has been or will be used for an unauthorized purpose.
2 If the investigation determines that the use of information about
3 a Nebraska resident for an unauthorized purpose has occurred or
4 is reasonably likely to occur, the individual or commercial entity

5 shall give notice to the affected Nebraska resident. Notice shall
 6 be made as soon as possible and without unreasonable delay,
 7 consistent with the legitimate needs of law enforcement and
 8 consistent with any measures necessary to determine the scope
 9 of the breach and to restore the reasonable integrity of the
 10 computerized data system.

11 (2) An individual or a commercial entity that maintains
 12 computerized data that includes personal information that the
 13 individual or commercial entity does not own or license shall
 14 give notice to and cooperate with the owner or licensee of the
 15 information of any breach of the security of the system when
 16 it becomes aware of a breach if use of personal information
 17 about a Nebraska resident for an unauthorized purpose occurred
 18 or is reasonably likely to occur. Cooperation includes, but is
 19 not limited to, sharing with the owner or licensee information
 20 relevant to the breach, not including information proprietary to
 21 the individual or commercial entity.

22 (3) Notice required by this section may be delayed if
 23 a law enforcement agency determines that the notice will impede
 24 a criminal investigation. Notice shall be made in good faith,
 25 without unreasonable delay, and as soon as possible after the
 26 law enforcement agency determines that notification will no longer
 27 impede the investigation.

1 Sec. 4. (1) An individual or a commercial entity
 2 that maintains its own notice procedures which are part of
 3 an information security policy for the treatment of personal
 4 information and which are otherwise consistent with the timing
 5 requirements of section 3 of this act, is deemed to be in
 6 compliance with the notice requirements of section 3 of this act if
 7 the individual or the commercial entity notifies affected Nebraska
 8 residents in accordance with its notice procedures in the event of
 9 a breach of the security of the system.

10 (2) An individual or a commercial entity that is
 11 regulated by state or federal law and that maintains procedures for
 12 a breach of the security of the system pursuant to the laws, rules,
 13 regulations, guidances, or guidelines established by its primary or
 14 functional state or federal regulator is deemed to be in compliance
 15 with section 3 of this act if the individual or commercial
 16 entity notifies affected Nebraska residents in accordance with the
 17 maintained procedures in the event of a breach of the security of
 18 the system.

19 Sec. 5. Any waiver of the provisions of the Financial
 20 Data Protection and Consumer Notification of Data Security Breach
 21 Act of 2006 is contrary to public policy and is void and
 22 unenforceable.

23 Sec. 6. For purposes of the Financial Data Protection
 24 and Consumer Notification of Data Security Breach Act of 2006, the
 25 Attorney General may issue subpoenas and seek and recover direct
 26 economic damages for each affected Nebraska resident injured by a

27 violation of the act.

1 Sec. 7. The Financial Data Protection and Consumer
 2 Notification of Data Security Breach Act of 2006 applies to
 3 the discovery of or notification pertaining to a breach of the
 4 security of the system that occurs on or after the operative date
 5 of this section.

6 2. Correct the internal references and the repealer so
 7 that the sections added by this amendment become operative three
 8 calendar months after the adjournment of this legislative session.

9 3. Renumber the remaining sections accordingly.

The Redfield amendment was adopted with 26 ayes, 0 nays, 18 present and not voting, and 5 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 366. E & R amendment, AM7141, printed separately and referred to on page 510, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 875. E & R amendment, AM7139, printed separately and referred to on page 472, was adopted.

Senator Beutler offered the following amendment:
 AM2189

(Amendments to E & R amendments, AM7139)

1 1. On page 13, line 2, after the comma insert "whichever
 2 is greater".

Senator Beutler moved for a call of the house. The motion prevailed with 15 ayes, 0 nays, and 34 not voting.

The Beutler amendment was adopted with 26 ayes, 0 nays, 18 present and not voting, and 5 excused and not voting.

The Chair declared the call raised.

Senator Beutler offered the following amendment:
 AM2190

(Amendments to E & R amendments, AM7139)

1 1. Insert the following new sections:
 2 Sec. 4. Section 44-3521, Revised Statutes Supplement,
 3 2005, is amended to read:
 4 44-3521 For purposes of the Motor Vehicle Service
 5 Contract Reimbursement Insurance Act:
 6 (1) Director means the Director of Insurance;
 7 (2) Mechanical breakdown insurance means a policy,

8 contract, or agreement that undertakes to perform or provide repair
9 or replacement service, or indemnification for such service, for
10 the operational or structural failure of a motor vehicle due to
11 defect in materials or workmanship or normal wear and tear and that
12 is issued by an insurance company authorized to do business in this
13 state;

14 (3) Motor vehicle means any motor vehicle as defined in
15 section 60-339;

16 (4) Motor vehicle service contract means a contract or
17 agreement given for consideration over and above the lease or
18 purchase price of a motor vehicle that undertakes to perform or
19 provide repair or replacement service, or indemnification for such
20 service, for the operational or structural failure of a motor
21 vehicle due to defect in materials or workmanship or normal wear
22 and tear but does not include mechanical breakdown insurance;

1 (5) Motor vehicle service contract provider means a
2 person who issues, makes, provides, sells, or offers to sell a
3 motor vehicle service contract, except that motor vehicle service
4 contract provider does not include an insurer as defined in section
5 44-103;

6 (6) Motor vehicle service contract reimbursement
7 insurance policy means a policy of insurance ~~providing meeting~~
8 the requirements in section 44-3523 that provides coverage for
9 all obligations and liabilities incurred by a motor vehicle
10 service contract provider under the terms of motor vehicle service
11 contracts issued by the provider; and

12 (7) Service contract holder means a person who purchases
13 a motor vehicle service contract.

14 Sec. 5. Section 44-3522, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 44-3522 No motor vehicle service contract shall be
17 issued, sold, or offered for sale in this state unless:

18 (1) The motor vehicle service contract provider is
19 insured under a motor vehicle service contract reimbursement
20 insurance policy issued by an insurer authorized to do business in
21 this state;

22 (2) True and correct copies of the motor vehicle service
23 contract and the motor vehicle service contract reimbursement
24 insurance policy have been filed with the director;

25 (3) The contract conspicuously states: ~~that~~

26 (a) ~~That~~ the obligations of the motor vehicle service
27 contract provider to the service contract holder are covered under
1 the motor vehicle service contract reimbursement insurance policy;
2 and

3 ~~(4)-(b) The contract conspicuously states the name and~~
4 ~~address of the issuer of the motor vehicle service contract~~
5 ~~reimbursement insurance policy; and -~~

6 (4) The service contract holder has signed a separate
7 form, entitled NOTICE OF RISKS, that contains the following

8 language:

9 "Neither the motor vehicle service contract nor the
10 motor vehicle service contract reimbursement insurance policy are
11 covered by the Nebraska Property and Liability Insurance Guaranty
12 Association Act and, in the event of insolvency of any party to
13 the contract, no coverage for any losses exists from the Nebraska
14 Property and Liability Insurance Guaranty Association.

15 The issuer of the motor vehicle service contract
16 reimbursement insurance policy is not a domestic entity and the
17 Department of Insurance can give no assurance that the issuer has
18 adequate reserves to cover potential losses."

19 The second paragraph of the notice is not required if the
20 motor vehicle service contract reimbursement insurance policy is
21 issued by an insurer that is domiciled in Nebraska.

22 Sec. 6. Section 44-3523, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 44-3523. (1) No motor vehicle service contract
25 reimbursement insurance policy shall be issued, sold, or offered
26 for sale in this state unless the policy conspicuously states that
27 the ~~issuer of the policy~~ insurer will pay on behalf of the motor
1 vehicle service contract provider all sums which the provider is
2 legally obligated to pay in the performance of its contractual
3 obligations under the motor vehicle service contracts issued or
4 sold by the provider.

5 (2) The motor vehicle service contract reimbursement
6 insurance policy shall completely and fully reimburse the motor
7 vehicle service contract provider for all repair costs incurred
8 under the motor vehicle service contract from the first dollar
9 of coverage. The motor vehicle service contract reimbursement
10 insurance policy shall not require or allow a motor vehicle service
11 contract provider to assume any portion of direct or first-dollar
12 liability for repairs under a motor vehicle service contract. The
13 motor vehicle service contract reimbursement insurance policy shall
14 not include any provision whereby the insurer provides coverage
15 in excess of reserves held by the motor vehicle service contract
16 provider or only in the event of the motor vehicle service contract
17 provider's insolvency or default. All unearned premium reserves
18 and claim reserve funds shall be established as liabilities on
19 the books of the insurer in accordance with statutory accounting
20 practices. This subsection shall not apply to programs directly
21 obligating an automobile dealer to perform under the motor vehicle
22 service contract.

23 2. Correct the operative date section and repealer so
24 that the sections added by this amendment become operative three
25 calendar months after adjournment of this legislative session.

26 3. Renumber the remaining sections and correct internal
27 references accordingly.

Senator Beutler withdrew his amendment.

Senators Beutler and Mines offered the following amendment:
AM2201

(Amendments to E & R amendments, AM7139)

- 1 1. Insert the following new sections:
- 2 Sec. 4. Section 44-3521, Revised Statutes Supplement,
- 3 2005, is amended to read:
- 4 44-3521 For purposes of the Motor Vehicle Service
- 5 Contract Reimbursement Insurance Act:
- 6 (1) Director means the Director of Insurance;
- 7 (2) Mechanical breakdown insurance means a policy,
- 8 contract, or agreement that undertakes to perform or provide repair
- 9 or replacement service, or indemnification for such service, for
- 10 the operational or structural failure of a motor vehicle due to
- 11 defect in materials or workmanship or normal wear and tear and that
- 12 is issued by an insurance company authorized to do business in this
- 13 state;
- 14 (3) Motor vehicle means any motor vehicle as defined in
- 15 section 60-339;
- 16 (4) Motor vehicle service contract means a contract or
- 17 agreement given for consideration over and above the lease or
- 18 purchase price of a motor vehicle that undertakes to perform or
- 19 provide repair or replacement service, or indemnification for such
- 20 service, for the operational or structural failure of a motor
- 21 vehicle due to defect in materials or workmanship or normal wear
- 22 and tear but does not include mechanical breakdown insurance;
- 1 (5) Motor vehicle service contract provider means a
- 2 person who issues, makes, provides, sells, or offers to sell a
- 3 motor vehicle service contract, except that motor vehicle service
- 4 contract provider does not include an insurer as defined in section
- 5 44-103;
- 6 (6) Motor vehicle service contract reimbursement
- 7 insurance policy means a policy of insurance ~~providing meeting~~
- 8 the requirements in section 44-3523 that provides coverage for
- 9 all obligations and liabilities incurred by a motor vehicle
- 10 service contract provider under the terms of motor vehicle service
- 11 contracts issued by the provider; and
- 12 (7) Service contract holder means a person who purchases
- 13 a motor vehicle service contract.
- 14 Sec. 5. Section 44-3522, Reissue Revised Statutes of
- 15 Nebraska, is amended to read:
- 16 44-3522 No motor vehicle service contract shall be
- 17 issued, sold, or offered for sale in this state unless:
- 18 (1) The motor vehicle service contract provider is
- 19 insured under a motor vehicle service contract reimbursement
- 20 insurance policy issued by an insurer authorized to do business in
- 21 this state;
- 22 (2) True and correct copies of the motor vehicle service
- 23 contract and the motor vehicle service contract reimbursement

24 insurance policy have been filed with the director;

25 (3) The contract conspicuously states: ~~that~~

26 (a) ~~That~~ the obligations of the motor vehicle service
27 contract provider to the service contract holder are covered under
1 the motor vehicle service contract reimbursement insurance policy;
2 and

3 ~~(4)(b) The contract conspicuously states the name and~~
4 address of the issuer of the motor vehicle service contract
5 reimbursement insurance policy; ~~and -~~

6 (4) The service contract shall contain the following
7 notice in a conspicuous place as determined by the Department of
8 Insurance;

9 NOTICE OF RISKS -- Neither the motor vehicle service
10 contract nor the motor vehicle service contract reimbursement
11 insurance policy are covered by the Nebraska Property and Liability
12 Insurance Guaranty Association Act and, in the event of insolvency
13 of any party to the contract, no coverage for any losses
14 exists from the Nebraska Property and Liability Insurance Guaranty
15 Association.

16 The issuer of the motor vehicle service contract
17 reimbursement insurance policy is not a domestic entity and the
18 Department of Insurance can give no assurance that the issuer has
19 adequate reserves to cover potential losses.

20 I have read this NOTICE OF RISKS (initials of
21 service contract holder).

22 The second paragraph of the notice is not required if the
23 motor vehicle service contract reimbursement insurance policy is
24 issued by an insurer that is domiciled in Nebraska.

25 Sec. 6. Section 44-3523, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 44-3523 (1) No motor vehicle service contract
1 reimbursement insurance policy shall be issued, sold, or offered
2 for sale in this state unless the policy conspicuously states that
3 the ~~issuer of the policy~~ insurer will pay on behalf of the motor
4 vehicle service contract provider all sums which the provider is
5 legally obligated to pay in the performance of its contractual
6 obligations under the motor vehicle service contracts issued or
7 sold by the provider.

8 (2) The motor vehicle service contract reimbursement
9 insurance policy shall completely and fully reimburse the motor
10 vehicle service contract provider for all repair costs incurred
11 under the motor vehicle service contract from the first dollar
12 of coverage. The motor vehicle service contract reimbursement
13 insurance policy shall not require or allow a motor vehicle service
14 contract provider to assume any portion of direct or first-dollar
15 liability for repairs under a motor vehicle service contract. The
16 motor vehicle service contract reimbursement insurance policy shall
17 not include any provision whereby the insurer provides coverage
18 in excess of reserves held by the motor vehicle service contract

19 provider or only in the event of the motor vehicle service contract
 20 provider's insolvency or default. All unearned premium reserves
 21 and claim reserve funds shall be established as liabilities on
 22 the books of the insurer in accordance with statutory accounting
 23 practices. This subsection shall not apply to programs directly
 24 obligating an automobile dealer to perform under the motor vehicle
 25 service contract.

26 2. Correct the operative date section and repealer so
 27 that the sections added by this amendment become operative three
 1 calendar months after adjournment of this legislative session.

2 3. Renumber the remaining sections and correct internal
 3 references accordingly.

The Beutler-Mines amendment was adopted with 26 ayes, 0 nays, 15 present and not voting, and 8 excused and not voting.

Advanced to E & R for engrossment.

SPEAKER BRASHEAR PRESIDING

RESOLUTION

Pursuant to Rule 4, Sec. 5(b), LR 287 was adopted.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LR 287.

STANDING COMMITTEE REPORTS

Appropriations

LEGISLATIVE BILL 1121. Indefinitely postponed.

(Signed) Don Pederson, Chairperson

Agriculture

LEGISLATIVE BILL 873. Indefinitely postponed.

(Signed) Bob Kremer, Chairperson

ANNOUNCEMENT

Senator Redfield designates LB 968 as her priority bill.

AMENDMENTS - Print in Journal

Senator Byars filed the following amendment to LB 87:
AM2188

(Amendments to AM1812)

- 1 1. On page 10, line 15, after "serve" insert "more than
- 2 two"; and in line 16 strike ", or more than five consecutive
- 3 years.".

Senator Schrock filed the following amendment to LB 975:
AM2192

(Amendments to Standing Committee amendments, AM2002)

- 1 1. Insert the following sections:
- 2 Sec. 17. A county planning commission or county board
- 3 shall allow a conditional use permit or special exception to any
- 4 existing animal feeding operation seeking to construct or modify
- 5 a livestock waste control facility if the purpose of seeking such
- 6 permit or exception is to comply with federal or state regulations
- 7 pertaining to livestock waste management. This allowance shall not
- 8 apply if:
- 9 (1) Construction of the livestock waste control facility
- 10 would allow the capacity of the animal feeding operation to
- 11 increase by more than the greater of (a) ten percent or (b)
- 12 five hundred cattle, three hundred fifty dairy cows, one thousand
- 13 two hundred fifty swine each weighing fifty-five pounds or more,
- 14 five thousand swine each weighing less than fifty-five pounds, two
- 15 hundred fifty horses, five thousand sheep or lambs, twenty-seven
- 16 thousand five hundred turkeys, fifteen thousand laying hens or
- 17 broilers if the animal feeding operation uses a liquid manure
- 18 handling system, sixty-two thousand five hundred chickens that are
- 19 not laying hens if the animal feeding operation uses other than
- 20 a liquid manure handling system, forty-one thousand laying hens
- 21 if the animal feeding operation uses other than a liquid manure
- 22 handling system, fifteen thousand ducks if the animal feeding
- 1 operation uses other than a liquid manure handling system, or two
- 2 thousand five hundred ducks if the animal feeding operation uses a
- 3 liquid manure handling system; or
- 4 (2) The operation has not complied with inspection
- 5 requirements pursuant to section 54-2423.
- 6 Sec. 18. Section 81-1513, Reissue Revised Statutes of
- 7 Nebraska, is amended to read:
- 8 81-1513 (1) Any person who owns or is in control of any
- 9 plant, building structure, process, or equipment may apply to the
- 10 director for a variance from rules or regulations. The director
- 11 may grant such variance if he or she finds that the emissions or
- 12 discharges occurring or proposed to occur do not endanger or tend
- 13 to endanger human health or safety or that compliance with the
- 14 rules or regulations from which variance is sought would produce
- 15 serious hardship without equal or greater benefits to the public.

16 In making such findings the director shall give due consideration
 17 to all the facts and circumstances bearing upon the reasonableness
 18 of the emissions or discharges involved including, but not limited
 19 to:

20 (a) The character and degree of injury to or interference
 21 with the health and physical property of the people;

22 (b) The social and economic value of the source of the
 23 air, water, or land pollution;

24 (c) The question of priority of location in the area
 25 involved; and

26 (d) The technical practicability and economic
 27 reasonableness of reducing or eliminating the emissions or
 1 discharges resulting from such source.

2 (2) No variance shall be granted until the director has
 3 considered the relative interests of the applicant, other owners of
 4 property likely to be affected by the discharges, and the general
 5 public. Before any variance is granted, the director shall give
 6 public notice of an application for such variance immediately upon
 7 receipt of such application and in accordance with the rules and
 8 regulations of the department. The notice shall be published in a
 9 newspaper of general circulation in the county in which the plant,
 10 building structure, process, or equipment on which the proposed
 11 variance is located.

12 (3) Any variance or renewal thereof shall be granted
 13 within the requirements of subsection (1) of this section, for time
 14 periods and under conditions consistent with the reasons therefor,
 15 and within the following limitations:

16 (a) If the variance is granted on the ground that
 17 there is no practicable means known or available for the adequate
 18 prevention, abatement, or control of the air, water, or land
 19 pollution involved, it shall be only until the necessary means for
 20 prevention, abatement, or control become known and available and
 21 subject to the taking of any substitute or alternate measures that
 22 the director may prescribe;

23 (b) If the variance is granted on the ground that
 24 compliance with the particular requirement or requirements from
 25 which variance is sought will necessitate the taking of measures
 26 which, because of their extent or cost, must be spread over a
 27 considerable period of time, it shall be for a period not to exceed
 1 such reasonable time as, in the view of the director, is requisite
 2 for the taking of the necessary measures. A variance granted on the
 3 ground specified in this section shall contain a timetable for the
 4 taking of action in an expeditious manner and shall be conditioned
 5 on adherence to such timetable; and

6 (c) If the variance is granted on the ground that it is
 7 justified to relieve or prevent hardship of a kind other than that
 8 provided for in subdivision (a) or (b) of this subsection, it shall
 9 be for not more than one year.

10 (4) Any variance granted pursuant to this section may

11 be renewed on terms and conditions and for periods which would
12 be appropriate on initial granting of a variance. If complaint
13 is made to the director on account of the variance, no renewal
14 thereof shall be granted unless the director finds that renewal
15 is justified. No renewal shall be granted except on application
16 therefor. Any such application shall be made at least thirty
17 days prior to the expiration of the variance. Immediately upon
18 receipt of an application for renewal and before approving the
19 renewal application, the director shall give public notice of
20 such application in accordance with rules and regulations of the
21 department. The public notice shall be published in the county in
22 a newspaper of general circulation in which the plant, building
23 structure, process, or equipment on which the variance is located.

24 (5) A variance or renewal shall not be a right of the
25 applicant or holder thereof but shall be in the discretion of the
26 director. The granting or denial of a variance or a renewal shall
27 be by final order of the director. Any person adversely affected by
1 such an order may appeal the decision, and the appeal shall be in
2 accordance with the Administrative Procedure Act.

3 (6) Nothing in this section and no variance or renewal
4 granted pursuant to this section shall be construed to prevent or
5 limit the application of the emergency provisions and procedures of
6 section 81-1507 to any person or his or her property.

7 (7) No variance shall be granted which will sanction any
8 violation of state or federal statutes or regulations.

9 2. On page 1, line 5, strike "section 16" and insert
10 "sections 16 and 17"; and on page 15, lines 20 and 22, after
11 "chickens" insert "or ducks".

12 3. Amend the operative date and repealer sections so that
13 the sections added by this amendment become operative on their
14 effective date with the emergency clause.

15 4. Renumber the remaining sections accordingly.

UNANIMOUS CONSENT - Add Cointroducer

Senator Pahls asked unanimous consent to add his name as cointroducer to LB 1170. No objections. So ordered.

ANNOUNCEMENT

Pursuant to Rule 8, Sec. 3, the Appropriations Committee presented its preliminary report on February 8, 2006, summarizing the recommended appropriations for the following biennium.

VISITORS

Visitors to the Chamber were Gary Fuchser from Gordon and Marjean Terrell from Hay Springs; members of Leadership Scotts Bluff, Leadership Box Butte, and Scottsbluff/Gering Chamber of Commerce; and the Bellevue

Chamber of Commerce Leadership Class.

The Doctor of the Day was Dr. Ron Craig from Lincoln.

ADJOURNMENT

At 12:00 p.m., on a motion by Senator Pahls, the Legislature adjourned until 9:00 a.m., Thursday, February 9, 2006.

Patrick J. O'Donnell
Clerk of the Legislature

